International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith Forgers and Helpers, Local 202 (Henders Boiler & Tank Company) *and* William O. Colvin. Case 26–CB–2545

September 28, 1990

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND DEVANEY

On September 12, 1989, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions[1] and to adopt the recommended Order as modified.[2]

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith Forgers and Helpers, Local 202, Southaven, Mississippi, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 1(a).

''(a) Denying unit employees who are not members of the Union employed by Henders Boiler & Tank Company at Horn Lake, Mississippi, the right to vote in any referendum regarding the floating holiday, while allowing union employees to vote.''

2. Substitute the following for paragraph 2(a).

''(a) In the event the Respondent conducts a referendum among unit employees employed by Henders Boiler & Tank Company at Horn Lake, Mississippi, to select the date of a floating holiday, the Respondent must grant to all unit employees alike the right to vote in the referendum.''

3. Insert the following as paragraph 2(c) and renumber the succeeding paragraph.

''(c) Sign and return to the Regional Director sufficient copies of the notice for posting by Henders Boiler & Tank Company, if willing, at all places where notices to employees are customarily posted.''

4. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT deny unit employees who are not members of the Union the right to vote in any referendum regarding the floating holiday while allowing union employees to vote.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of rights guaranteed them under Section 7 of the Act.

WE WILL, in the event we conduct a referendum among unit employees employed by Henders Boiler & Tank Company at Horn Lake, Mississippi, to select the

[1] In adopting the judge's conclusion that the Respondent violated Sec. 8(b)(1)(A), we note that the judge inaccurately described the case history of *NLRB v. Food & Commercial Workers Local 1182*, 475 U.S. 192 (1986). The correct history of that case is set out in the Board's decision on remand from the Supreme Court. 299 NLRB No. 72 (July 29, 1988). Nonetheless, we agree with the judge that the issue of the effect of a union's delegating its representative responsibilities to union members was not before the Court.

We also note that the facts on which the judge based his finding that the Respondent had violated Sec. 8(b)(1)(A) are distinguishable from those in *American Postal Workers (Postal Service)*, 300 NLRB No. 5, issued this day. In that case, the Board found that a union did not violate Sec. 8(b)(1)(A) by refusing to permit nonmember unit employees to attend a union meeting at the union hall. In that case, as distinct from the case at hand, there was no evidence that the union had established a procedure to which nonmembers were denied access into a ''substitute for negotiation.'' *Letter Carriers Branch 6000*, 232 NLRB 263 fn. 1 (1977), enfd. 595 F.2d 808 (D.C. Cir. 1979).

[2] The affirmative provision of the judge's recommended Order mandates that the Respondent conduct an annual referendum of all the Employer's unit employees to determine their individual preferences for the date of a floating holiday. The relevant section of the collective-bargaining agreement provides for the floating holiday ''to be mutually selected by the Company and the Union.'' Under the parties' past practice, the Respondent has delegated to employees its role in selecting the floating holiday and has submitted the choice of a majority of polled employees to the Employer. We find it unnecessary to order the Respondent to maintain this practice to remedy the violation here. We are modifying the judge's recommended Order to require, not that the Respondent continue to participate in choosing the holiday by means of a referendum, but only that, if the contract continues to accord the Respondent a role in choosing the holiday and the Respondent chooses to delegate this role to unit employees acting through a referendum, the Respondent must allow all unit employees to vote in the referendum.

The cease-and-desist order has been tailored to the violation alleged and found.

date of a floating holiday, grant to all unit employees alike the right to vote in such referendum.

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS, IRON SHIPBUILDERS, BLACKSMITH FORGERS AND HELPERS, LOCAL 202

Donna O. Griffin, Esq., for the General Counsel.
Michael J. Stapp, Esq. (Blake & Uhlig, P.A.), of Kansas City, Kansas, for the Respondent.
Mr. William O. Colvin, appearing pro se.

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. The charge was filed on March 27, 1989,[1] by William O. Colvin, an individual (Colvin), and complaint issued on April 12 and was amended on April 19. As amended, the complaint alleges that the International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith Forgers and Helpers, Local 202 (Respondent or the Union), on March 22 failed to allow Colvin and other employees an opportunity to vote on a ''floating holiday'' which was provided for in an expired collective-bargaining agreement between Respondent and the employees' employer, the terms of which were being enforced by the parties thereto. The complaint alleges that Colvin and other employees were not allowed to vote because they were not members of Respondent, while other unit employees who were members of Respondent were allowed to vote. By such conduct, the complaint alleges, Respondent restrained and coerced employees within the meaning of Section 8(b)(1)(A) of the National Labor Relations Act (the Act).

A hearing on this matter was conducted before me on July 13 in Memphis, Tennessee. Thereafter, the General Counsel and Respondent filed briefs, and the General Counsel filed a motion to strike a portion of Respondent's brief. Upon the entire record, and upon my observation of the demeanor of the witnesses I make the following

FINDINGS OF FACT

I. JURISDICTION

Henders Boiler & Tank Company (the Employer) is a corporation with a facility located at Horn Lake, Mississippi, where it is engaged in the manufacturing of tanks and boilers. During the 12 months preceding issuance of the complaint, the Employer sold and shipped from its Horn Lake, Mississippi facility goods and materials valued in excess of $50,000 directly to points outside the State of Mississippi, and received products and materials similarly valued at said facility from such points. The Employer is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act. The pleadings establish that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

[1] All dates are in 1989 unless otherwise stated.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Factual Summary*

The Union had represented all of the Employer's employees, with certain exceptions, for many years, and was party to a collective-bargaining agreement which expired in November 1987. The Employer continued to observe the conditions of the contract except for a dues-checkoff provision. The agreement provided for designated holidays and a ''floating holiday . . . to be mutually selected by the Company and the Union.''[2]

The past practice in selecting the floating holiday normally consisted of a poll of all unit employees by the Union. A list of employees was presented to each employee by a union representative, and the employee designated his or her preference for the holiday.[3] On one occasion a list had been posted on a bulletin board. The employees did not always agree on the holiday and in such circumstances the ''majority ruled.''[4] The union president presented the ''list'' to management which routinely designated the floating holiday in accordance with the employees' wishes.[5]

In the current year, the Union posted a notice of a meeting to be held on March 14, at about noon, in a designated area of the plant. No subject matter for the meeting was announced. The Charging Party was invited to the meeting, but declined because it was the lunch hour. Another nonunion employee was aware of the meeting.[6] About 10 to 12 employees attended the meeting, all of them union members according to Union President Burns. The latter asked them to designate their floating holiday choices on a seniority list. About 80 percent selected July 3 and remainder Good Friday.

A few days later, Union Secretary-Treasurer Robert Brady conducted a poll of all unit employees, using a seniority list. He told the Charging Party that he believed the way in which Union President Burns had conducted the poll was unlike prior procedure, and was ''unfair.'' Brady told Production Manager Bell that he believed there should have been a ''total list,'' and that ''all those within the Company'' should have had a choice. Various employees voiced complaints to Bell, and Colvin stated his intention to file charges.

According to employee Steven Reynolds, Secretary-Treasurer Brady told him that Union President Burns did not like the way Brady had taken a poll, and was going to take his own. Brady threw away the results of his poll, according to Reynolds. Union President Burns testified that Brady did not communicate to him the results of the latter's poll, and Production Manager Bell denied knowledge of the results.

Bell told Union President Burns to conduct another poll. Burns consulted with an International representative, and they decided to poll only union members, because ''the contract specifies (that) the Union and the Company will determine the floating holiday.'' Accordingly, on March 22, Burns polled only union members on their choice of a float-

[2] G.C. Exh. 2, sec. 7.

[3] Testimonies of Union President Warren F. Burns and employees Colvin, William E. Ray, Jr., Steven Reynolds, and Manuel Garza.

[4] Testimonies of Union President Burns, and the Employer's production manager Richard E. Bell.

[5] Testimony of Employer's production manager Bell, who called the list a ''petition.''

[6] William E. Ray, Jr.

ing holiday. Charging Party Colvin heard Burns say that ''non-members don't vote,'' and William E. Ray gave similar testimony. It is this poll which the complaint alleges to have been unlawful.

The majority choice on March 22 was Good Friday, but a minority of the union members still preferred the date of July 3, according to Burns. The Union gave Production Manager Bell a ''written piece of paper'' rather than a ''list'' designating Good Friday, according to Bell.

Burns testified that Good Friday was the ''consensus'' of the nonunion employees, although he did not speak to any of them about the matter and did not receive any communication from Brady about his poll. According to Burns, he derived his information from ''shop talk.'' Various nonunion employees testified about the March 22 poll. Manuel Garza stated that he had no objection to it. Steven Reynolds asserted that Good Friday was the consensus choice of the nonunion employees, and that the Union probably knew this. William E. Ray, Jr. stated that Good Friday was his choice, and Charging Party Colvin acknowledged that he probably would have made the same selection if given the chance. However, according to Reynolds, he still had a ''problem with the way it (Good Friday) was selected.'' Colvin testified that his objection was ''not being able to vote.''

There were normally 28 employees in the unit, although it numbered 34 at the time of the hearing.[7] Union President Burns asserted that there were one or two nonunion employees in the plant. However, four employees affirmed that they had formerly been union members, but had left the Union prior to 1989.[8] Colvin testified that there were 11 nonunion employees at the time of the hearing. I conclude that there were at least four nonunion employees at the time of the March 22, 1989, poll, and, crediting Colvin, that there were 11 at the time of the hearing (July 13).

B. *Legal Analysis and Conclusions*

The leading Board decision on this issue is *Letter Carriers Branch 6000*, 232 NLRB 263 (1977), enfd. 595 F.2d 808 (D.C. Cir. 1979). In that case, the employer and the union had executed a memorandum agreeing that the letter carriers could vote on the issue of fixed or rotating days off. After an election on this issue in which all employees voted, union members protested, and the union conducted a second election from which nonunion members were excluded. The Board concluded that this was not a matter exclusively within the internal domain of the union, and that the intent of the contracting parties could not be controlling. The Board stated:

> Limiting to union member unit employees only the right to participate in a referendum which determines an aspect of working conditions necessarily discriminates against nonunion unit employees. Where the matter at issue is of importance to all unit employees, a direct consequence of denying the right to participate to nonmembers is to encourage nonmember unit employees to join the Union. Such conduct is clearly proscribed by Section 8(a)(1) and 8(b)(1)(A) of the Act (authority cited). Accordingly, we find that Respondent, by denying nonunion unit employees the right to vote in a referendum conducted to determine specific terms and conditions of employment affecting all unit employees, violated Section 8(b)(1)(A) of the Act (id.).

The Board distinguished this conclusion from the ratification of a collective-bargaining agreement:

> This is unlike the ratification of an otherwise agreed-upon contract, in which the required ratification is an integral part of the union's representation process, and thus an internal union matter properly determinable by union members alone, for the same reasons the members alone may choose the negotiators. Here, in contrast, the voting was on the choice of one work schedule or another, so that the voting became a substitute for negotiation and thereby eliminated from the situation the union representation element, and with it the propriety of limiting to union members a voice in the choice (id.).

The Board's decision and rationale were affirmed by the Court of Appeals for the District of Columbia Circuit.[9] The court discussed the authority of a majority representative to act for all employees in the unit, and the duty of fair representation requiring the representative to consider the interests of all represented employees. This obligation may be delegated, but the delegatee in turn is bound by the requirements of fair representation, and decisions motivated solely by self-interest constitute a breach of that duty. In *Branch 6000*, the court reasoned, ''the ultimate decision maker—the union membership—did not function in a representative capacity. The referendum merely computed the composite personal preferences of individual union members without consideration of the views or interests of non-union employees'' (id., 595 F.2d at 812).

The court distinguished the facts in *Branch 6000*, from other possible situations: (l) where the union membership, acting as a committee of the whole under proper safeguards, gives consideration to the interests of nonmembers; and (2) a poll of union members prior to formulation of a bargaining position, where the bargaining responsibility remains with an individual or a committee bound by the obligation of fair representation. The court also rejected the union's argument that the General Counsel was required to prove ''disparate impact'' upon the nonunion employees. ''Given the understanding that each union member would vote his personal preferences, evidence of disparate impact is unnecessary to prove that the interests of non-members have been ignored.'' The court accepted the Board's distinction of this situation from that of contract ratification where, although the bargaining representative may not carry out the wishes of nonunion employees, the representative is bound by the duty of fair representation and there is a '''rational argument' for rejection of the unsuccessful view'' (id., 595 F.2d at 812–813).

These distinction have been noted recently with tacit acceptance by the Court of Appeals for the Fifth Circuit.[10]

[7] Testimony of Production Manager Bell.

[8] Charging Party Colvin, William E. Ray, Jr., Steven Reynolds, and Manuel Garza.

[9] *Letter Carriers Branch 6000*, 595 F.2d 808 (D.C. Cir. 1979), enfg. 232 NLRB 263 (1977).

[10] *Standard Fittings Co. v. NLRB*, 845 F.2d 1311, (5th Cir. 1988), enfg. 285 NLRB 285 (1987). In that case the union, responding to the employer's plea

And, in *Lodge No. 10, IAM*, 257 NLRB 587 (1981), the Board concluded that the union, by failing to accord employees an opportunity to vote on work schedules ''for reasons related to membership in the Union and based on arbitrary considerations,'' thereby violated Section 8(b)(1)(A) (id., 257 NLRB at 590).[11]

Respondent argues that the Supreme Court's decision in *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986)[12] and the Fifth Circuit's decision in *Standard Fittings*, supra, undercut the reasoning outlined above.[13] *Financial Institution Employees* involved the union's failure to allow nonunion employees to vote in an affiliation election. After the Board amended the union's certification to reflect the affiliation and found that the Employer had unlawfully refused to bargain with it, the Board was reversed by the Ninth Circuit which in turn was sustained by the Supreme Court. Analysis of the Court's decision shows that it was not concerned with the distinction adopted in *Letter Carriers*, but, rather, with other matters. The nature of the Court's interest is indicated by the following language:

> Petitioners contend that this statutory scheme does not adequately protect the interests of nonunion employees, and that this justifies the Board's new rule. They argue that an affiliation may affect a union's representation of the bargaining unit even if it does not raise a question of representation, but that argument overlooks the fact that a union makes many decisions that ''affect'' its representation of nonmember employees. It may decide to call a strike, ratify a collective-bargaining agreement, or select union officers and bargaining representatives. Under the Act, dissatisfied employees may petition the Board to hold a representation election, but the Board has no authority to conduct an election unless the effects complained of raise a question of representation. In any event, dissatisfaction with representation is not a reason for requiring the union to allow nonunion employees to vote on union matters like affiliation. Rather, the Act allows union members to control the shape and direction of their organization, and ''[n]on-union employees have no voice in the affairs of the union (authority cited).'' [id., 475 U.S at 205.]

All of the foregoing actions involve a union acting in its representative capacity, with the presumption that in doing so it is acting on behalf of all represented employees, with the duty of fair representation. There is no more reason to believe that a statutory bargaining representative would fail to adhere to that duty in selecting a new union affiliation than it would in ratifying a collective-bargaining agreement. There is nothing in the Court's decision about the effect of a union's departure from the ''representation process'' by delegating its responsibilities to others, such as union members acting solely in their own private interests. There is nothing in that decision about the possibility, suggested by the District of Columbia Circuit in *Letter Carriers*, that union members operating as a ''committee of the whole,'' with appropriate safeguards for consideration of the interests of nonunion employees, might appropriately be considered to be acting in a representative capacity. I conclude that the Court's decision in *Financial Institution Employees* does not invalidate the rationale in the decisions of the Board and the courts indicated above.

Respondent's assertion that the Fifth Circuit's decision in *Standard Fittings* supports the Company's argument is apparently based on the following language from that decision:

> The company's claim that any union that agreed to membership ratification of a contract proposal must permit non-union employees to vote on the issue is contrary to well established law. While *Letter Carriers* and *International Brotherhood of Teamsters v. N.L.R.B*, 587 F.2d 1176, 1181 (D.C. Cir. 1978), said that ''once a certified representative has determined to gain membership approval before it accepts a contract, it must accord the opportunity to vote equally to all unit members (or it) fails to represent them fairly,'' the Supreme Court recently observed in *N.L.R.B v. Financial Institution Employees*, 475 U.S. 192, . . . that the NLRB permits union members to make many decisions affecting the employment rights of non-member unit employees. ''[T]he Act allows union members to control the shape and direction of their organization'' and ''[n]on-union employees have no voice in the affairs of the union.'' id. (quoting *NLRB v. Allis Chalmers Manufacturing Co.*, 388 U.S. 175, 191. . . . The Court specificially cited the right to ''ratify a collective-bargaining agreement or select union officers and bargaining representatives'' as examples of internal union matters concerning which non-union employees may be excluded from voting (citation). 845 F.2d at 1318–1319.

The view attributed to the District of Columbia Circuit by the above language is found in a case which preceded *Letter Carriers* and *Teamsters Local 310 v. NLRB*, 587 F.2d 1176, 1182 (D.C. Cir. 1978). However, in *Letter Carriers*, which the same court issued the following year, it stated:

> With respect to terms and conditions of employment, the Act grants to the majority representative power to act as the exclusive bargaining agent for all the employees in the bargaining unit. Individual employees have no separate negotiating rights; they must look exclusively to the union for protection of their interests. 595 F.2d at 811.

Thereafter, as indicated, the District of Columbia Circuit made the distinctions outlined above in supporting the

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of financial difficulties, had offered to postpone a mid-term wage increase mandated by the collective-bargaining agreement, conditioned on ratification by the union membership. The members rejected the proposed modification, and the employer argued that the union had acted illegally in prohibiting the nonunion members from voting on the union's proposal, citing *Letter Carriers*. The court in *Standard Fittings*, after reciting the distinction by the Board and the court in *Letter Carriers* between a referendum and a contract modification governed by the duty of fair representation, stated that the latter was the issue under its consideration, and rejected the employer's argument based on ''easily distinguishable authority.'' (id., 845 F.2d at 1318 and fn. 10).

[11] The Board noted that the complaint failed to allege the illegality of limiting voting only to union members because the votes took place outside the statutory period of limitation. With respect to this, the Board stated:

> It is axiomatic that Respondent, as the representative of all the bargaining unit employees, lawfully could not restrict voting on this term and condition of employment to its members only. Thus, Respondent was required to give all unit employees, regardless of whether they were or were not members, a chance to exercise a vote, since the subject matter related to the terms of their employment. 257 NLRB 589, fn. 9.

[12] Also cited as *NLRB v. Food & Commercial Workers Local 1182*.

[13] R. Br. pp. 11–12.

Board's rationale. Further, also as delineated above, the Fifth Circuit in *Standard Fittings* tacitly accepted those distinctions. I conclude that Respondent's reliance on *Standard Fittings* is misplaced.

As noted, the Board in *Letter Carriers* called the union members' selection of days off a ''substitute for negotiation,'' while the District of Columbia Circuit held that a composite of the individual choices of union members was not ''representative'' activity on behalf of all unit employees. No more than that took place in this case. Although there is evidence that the ''consensus'' choice of the nonunion employees was the same day as that of the majority of union employees (Good Friday), the number of nonunion employees at the time of the referendum is unknown. Although there is some evidence that Union president Burns was aware of the nonunion ''consensus,'' he can scarcely have taken it into account in making the decision—the Union considered the choice of a floating holiday to be its contractual right, excluded the nonunion employees from the referendum, and ignored the results of a poll of all employees taken by another union officer. Regardless of whether the Union ''considered'' the nonunion consensus, the exclusion of nonunion employees from the voting was inherently coercive.

The fact that some of the nonunion employees also wanted the floating holiday selected by the union members is irrelevant. As some of the nonunion employees stated, it was their exclusion from the selection process which disturbed them. The Board customarily uses an objective test to ascertain unlawful restraint and coercion, and Respondent's exclusion of nonunion employees from the voting process had the natural tendency of persuading them to become union members in order to have a voice in their working conditions. As the court stated in *Letter Carriers*, evidence of disparate impact upon nonunion employees is unnecessary once it is established that the union members voted their own personal preferences.

For the foregoing reasons I conclude that, by denying nonunion unit employees the right to vote in a referendum conducted on March 22, 1989, of individual preferences concerning specific terms and conditions of employment affecting all unit employees, while allowing union employees to vote, Respondent thereby violated Section 8(b)(1)(A) of the Act.

In accordance with my findings above, I make the following

CONCLUSIONS OF LAW

1. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith Forgers and Helpers, Local 202 is a labor organization within the meaning of Section 2(5) of the Act.

2. By denying nonunion unit employees the right to vote in a referendum on March 22, 1989, of individual employee preferences concerning terms and conditions of work of all unit employees employed by Henders Boiler & Tank Company at Horn Lake, Mississippi, while allowing union employees to vote, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(b)(1)(A) of the Act.

3. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be required to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Inasmuch as the unlawfully selected date of Good Friday has already passed,[14] it is impossible to remedy this matter for the current year. However, I shall recommend that Respondent be required in the future to conduct a referendum among all employees in the bargaining unit to determine the floating holiday, so long as the collective-bargaining agreement contains the same provision on floating holidays as the one contained in the last agreement, and to post appropriate notices.

On these foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended[15]

ORDER

The Respondent, International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmith Forgers and Helpers, Local 202,, it officers, agents, and representatives shall

1. Cease and desist from

(a) Denying nonunion unit employees employed by Henders Boiler & Tank Company at Horn Lake, Mississippi, the right to vote in a referendum of individual employee preferences concerning terms and conditions of work of all unit employees, while allowing union employees to vote.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Conduct an annual referendum of all unit employees employed by Henders Boiler & Tank Company at Horn Lake, Mississippi, in order to determine their individual preferences for the date of a floating holiday, as long as the same provision for such holiday remains in a collective bargaining in effect or being enforced.

(b) Post at its business offices, hiring hall if any, and meeting places, copies of the attached notice marked ''Appendix.''[16] Copies of said notice, on forms provided by the Regional Director for Region 26, after being signed by Respondent's authorized representative, shall be posted by Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.[17]

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[14] I take judicial notice of the fact that Good Friday precedes Easter and that this date has passed as of the date of this Decision.

[15] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[16] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[17] In light of my decision above, I consider the General Counsel's Motion to Strike a Portion of Respondent's brief to be moot.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.